



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

May 12, 2003

Mr. Robert R. Ray  
Assistant City Attorney  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952

OR2003-3177

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180859.

The City of Longview (the "city") received a request for a list of all e-mail messages received and sent by the city manager or any employee on behalf of the city manager, and all information pertaining to payments made to Longview City Council members. You state that you have released the information pertaining to payments made to city council members. However, you claim that portions of the remaining requested information are excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.137 of the Government Code makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses that we have marked under section 552.137. We note that section 552.137 does not apply to a business's general e-mail or website address or to a government employee's work e-mail address.

We note that the submitted documents contain information that may be protected from disclosure under section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee, as well as information revealing whether the employee has family members, if the current or former employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). However, you may not withhold this information in the case of a current or former employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). The city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The city may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. Therefore, the city must withhold the information that it has marked along with the additional information that we have marked under section 552.117(1) for the current or former employees who timely elected to keep their information confidential.

In summary, the city must withhold the e-mail addresses that we have marked under section 552.137. The city must also withhold certain information that it has marked, along with additional information that we have marked, under section 552.117 for employees who made a timely election under section 552.024. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 180859

Enc: Submitted documents

c: Mr. Murray Moore  
c/o Robert R. Ray  
City of Longview  
P.O. Box 1952  
Longview, Texas 75606-1952  
(w/o enclosures)